THE 2012 EPA CGP: ANSWERS TO COMMON QUESTIONS

INTRODUCTION

The following question and answer (Q&A) document provides answers to general questions about EPA's National Pollutant Discharge Elimination System (NPDES) construction stormwater permitting program, and specific questions about various requirements in EPA's 2012 Construction General Permit (CGP). This document incorporates previous Q&As that EPA has provided in the past and new Q&As that have come up since EPA issued the 2012 CGP. It is intended for use by operators of construction sites who are eligible for coverage and/or who are permitted under EPA's 2012 CGP, or by interested members of the general public.

EPA notes that while the Agency has made every effort to ensure the accuracy of all answers included in this document, the actual obligations applicable to operators covered by the CGP are determined by the relevant provisions of the permit, not by this Q&A document. In the event of a conflict between this Q&A document and any corresponding provision of the 2012 EPA CGP, operators must abide by the requirements in the permit.

EPA welcomes comments on this Q&A document at any time and will consider those comments in any future revisions to the document. You may contact EPA for CGP-related inquiries at cgp@epa.gov.

QUESTIONS AND ANSWERS

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1. What is the National Pollutant Discharge Elimination System (NPDES) program?

The National Pollutant Discharge Elimination System (NPDES) is a federal permitting program under the authority of the Clean Water Act (CWA) that establishes controls on point source discharges of pollutants to waters of the United States.

Point sources are defined at CWA section 502(14) and, generally speaking, are discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged.

The term waters of the United States is defined in EPA's regulations at 40 CFR 230.3(s).

The term pollutant is defined at 40 CFR 122.2 and means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

2. What is the EPA Construction General Permit (CGP)?

The EPA Construction General Permit (CGP) is an NPDES general permit issued by EPA under the authority of the CWA and associated regulations. At present, EPA has issued and administers the CGP in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, areas in four states (Colorado, Delaware, Vermont, and Washington) subject to construction by Federal Operators, most of Indian Country, and a few other specifically designated activities in specific states. All other areas of the United States are generally covered under state-issued construction stormwater permits.

The EPA CGP authorizes, subject to specific terms and conditions, the discharge of stormwater from construction sites or activities that disturb one acre or more of land, and from smaller sites that are part of a larger, common plan of development. The EPA CGP requires operators of such construction sites or activities to implement stormwater controls and to develop stormwater pollution prevention plans (SWPPPs) in an effort to minimize the amount of sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

The EPA CGP and additional information are available at this website: http://water.epa.gov/polwaste/npdes/stormwater/EPA-Construction-General-Permit.cfm.

3. Why is it necessary to authorize or permit stormwater discharges from construction sites?

As stormwater flows over a construction site, it can pick up pollutants like sediment, turbidity, debris, nutrients, and chemicals and transport these to receiving waterbodies. Stormwater discharges containing sediment and turbidity can cause an array of negative physical, chemical, and biological impacts on receiving waters. In addition to sediment and turbidity, a number of other pollutants (e.g., metals, organic compounds, nutrients) are preferentially absorbed or adsorbed onto mineral or organic particles found in fine sediment. The sediment, turbidity, and other pollutants entrained in stormwater discharges associated with construction activity contribute to aquatic ecosystem degradation, increased drinking water treatment costs, and impairment of the recreational use and aesthetic value of impacted waters. Sediment can also accumulate in rivers, lakes, reservoirs, and other waters, leading to the need for dredging or other mitigation in order to ensure adequate water storage or navigation capacity. The

requirements in the EPA CGP ensure that operators minimize the discharge of sediment and other construction site pollutants in stormwater to surface waters.

4. What types of construction activities must obtain NPDES permit coverage for their stormwater discharges?

Generally speaking, any "construction activity" that will disturb, or that is part of a "common plan" of development or sale that will disturb, one or more acres of land and discharges stormwater to one or more waters of the U.S. must obtain NPDES permit coverage. Note that there are situations in which construction activities may be waived or excused from the requirement to obtain NPDES permit coverage (see related Q&A below).

"Construction activity", as defined in Appendix A of the 2012 EPA CGP, includes earth-disturbing activities, such as the clearing, grading, and excavation of land. Also authorized under the CGP are discharges of stormwater from "construction support activities", which include construction-related activities that specifically support the construction activity and involve earth disturbance or pollutant-generating activities of its own (e.g., activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, borrow areas).

5. Is NPDES permit coverage required for oil and gas construction?

Oil and gas construction activities are exempt from the requirement to obtain NPDES permit coverage unless the facility meets one of the conditions in 40 CFR 122.26.c(1)(iii) noted below.

The following regulations applicable to oil and gas construction activities are currently in effect:

> ***40 CFR § 122.26(a)(2)*** *The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.*
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> ***40 CFR § 122.26(c)(1)(iii)*** *The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:*
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> > *(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or*
> > *(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or*
> > *(C) Contributes to a violation of a water quality standard.*

Also in effect is the provision added to the Clean Water Act in accordance with Section 323 of the Energy Policy Act of 2005 defining the term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" to mean "all field activities or operations

associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity." See 33 U.S.C. § 1362(24).

The exemption at 122.26.c(1)(iii) does not apply to Clean Water Act (CWA) 404 permits. The exemption only applies to stormwater discharges from oil and gas exploration, production, processing or treatment, or transmission facilities (e.g., facilities/activities directly related to extraction or basic oil/gas processing such as fractionation plants, and not to such operations as liquified natural gas (LNG) re-gasification and ethanol plants). The exemption does not apply and permit coverage is required when construction activities associated with any of these facilities either 1) had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is required (e.g., oil sheen), anytime since November 16, 1987, or 2) contribute to a violation of a water quality standard (e.g., sediment discharges violating a water quality criteria or causing loss of fishing resources). Additionally, if any portion of the construction activity associated with one of these facilities no longer qualifies for the oil and gas exemption, the operator must obtain construction stormwater permit coverage for all subsequent discharges of pollutants to a water of the U.S. from the site. If the operator determines that all of the construction activities associated with the facility are in fact exempt, the owner/operator is not required to obtain NPDES construction stormwater permit coverage (although EPA encourages development and implementation of a stormwater pollution prevention plan (SWPPP)). However, if the project has had a stormwater discharge of a reportable quantity or a stormwater discharge that contributes to a violation of a water quality standard, the operator is in violation of the CWA prohibition on the discharge of a pollutant by a point source to a water of the U.S. without NPDES permit coverage for any subsequent discharges. The operator may then be subject to penalties if they do not obtain NPDES construction stormwater permit coverage.

For more information about the potential need for permitting of oil and gas construction activities, see http://water.epa.gov/polwaste/npdes/stormwater/Regulation-of-Oil-and-Gas-Construction-Activities.cfm.

6. Who is eligible for coverage under EPA's 2012 CGP?

Operators of construction activities that will disturb one or more acres of land (or that will disturb less than one acre but are part of a common plan of development or sale that will ultimately disturb one acre or more) in an area where EPA is the NPDES permitting authority can apply for coverage under EPA's CGP. Operators requiring CGP coverage include any party associated with a construction activity that meets either of the following two criteria: (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). Where there are multiple operators associated with the same project, all operators are required to obtain coverage under the EPA CGP.

To be authorized under the 2012 EPA CGP, the operator must meet the eligibility requirements specified in Part 1.1 of the permit. The operator must also submit a Notice of Intent (NOI), which provides certification that the eligibility requirements have been met and that permit requirements will be complied with.

7. What is an NOI?

EPA's 2012 CGP relies on the submission of an electronic document called a Notice of Intent (NOI) to provide coverage under its permit. An NOI for a general permit is notice to the NPDES permitting authority (EPA in this instance) of the operator's intent to be covered under the general permit. An NOI typically contains basic information about the site and the proposed discharge. By signing and submitting the NOI, the operator is certifying that the information submitted is true, accurate, and complete, that the operator meets the eligibility requirements, and that, if and when covered, the operator will comply with the permit conditions and effluent limitations. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed and the applicable waiting period has passed (e.g., 14 days for the EPA CGP).

8. What type of information must be submitted in an NOI?

Operators must provide the following in their NOI for coverage under the 2012 EPA CGP:

- NPDES permit number;
- Operator information;
- Project/site information;
- Discharge information;
- Chemical treatment information, if applicable;
- SWPPP information;
- Threatened and endangered species information;
- Historic preservation information;
- Certification of NOI; and
- Contact information for NOI preparer.

A paper copy of the NOI is included as Appendix J of the 2012 EPA CGP.

9. Who is responsible for submitting the NOI for EPA CGP coverage?

If a project is eligible for coverage under the EPA CGP, and CGP coverage is sought, the operator is responsible for submitting an NOI to be covered under the permit. That is, if you meet either of the following two criteria, you are responsible for submitting an NOI to be covered under the permit:

- You have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., you are the owner or developer of the project), or
- You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with the permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the permit and/or you are the general contractor).

The party that meets the first part of the definition of "operator" (*the party that has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications)* in most cases will be the owner of the site. The party that meets the second part of the definition of "operator" (*the party that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions)* in most cases will be the general contractor of the project. Where there are multiple

operators associated with the same project, all parties meeting the definition of "operator" must submit an NOI to be covered under the EPA CGP if such coverage is sought.

You are probably not an operator, and therefore are not responsible for submitting an NOI to be covered under the EPA CGP, if:

- You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the general contractor directs your activities on-site, you probably are not an operator); or
- Your activities on site result in an earth disturbance and you are not legally a subcontractor, but there is another entity with permit coverage for the project and they have a SWPPP that specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on stormwater quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). EPA anticipates that this will be the case for many, if not most, utility service line installations.

10. If I want to pursue EPA CGP coverage, how many Notices of Intent (NOIs) must I submit?

As discussed in the previous answer, each operator for a project must submit one NOI to cover the areas of the project that are under his/her control. For example, if you are building homes on multiple lots as part of a larger residential subdivision development, you can submit one NOI to cover all of your lots, even if they are on opposite sides of the development.

11. My project's disturbances will occur in an area covered by EPA's CGP and in an area covered under a state-issued construction stormwater permit. Do I need coverage under both the EPA-issued CGP and the state-issued permit?

Operators of projects disturbing one or more acres of land where only a portion of the project occurs in an area where EPA is the NPDES permitting authority (and there will be a discharge of pollutants (stormwater) to waters of the United States within the area where EPA is the permitting authority) need coverage under an EPA-issued construction stormwater permit (e.g., he CGP), and likely would need coverage from the NPDES permitting authority(ies) that have jurisdiction over the other portions of the project (i.e., from a state or tribal permitting authority) if there will be a discharge of pollutants (stormwater) to waters of the United States in the other area. For example, if a project has contiguous disturbances or disturbances that are part of a common plan of development or sale that occur both in the State of New Mexico and the State of Arizona, and the disturbances will total an acre or more of land and will result in the discharge of pollutants through stormwater in both states, the operator of the project will need coverage under an EPA-issued stormwater permit (e.g., the CGP) for the disturbances in New Mexico and, if required by the State of Arizona, an Arizona-issued stormwater permit (even if the portion of the project in EPA's jurisdiction is less than an acre).

12. Where are NOIs sent?

You must use the electronic Notice of Intent (eNOI) system to prepare and submit your NOI. However, if you have a problem with the use of the eNOI system, contact the EPA Regional Office that corresponds to the location of your site. If you are given approval by the EPA Regional Office to use a paper NOI, and you elect to use it, you must complete the paper NOI form in Appendix J of the EPA CGP. The eNOI system can be accessed at

http://water.epa.gov/polwaste/npdes/stormwater/EPAs-Electronic-Construction-General-Permit-Notice-of-Intent-eNOI-Home-Page.cfm. You must also look in Part 9 of the permit to determine if copies of the NOI form must be sent to a state or Indian tribe.

13. What is the deadline for submitting an NOI for my construction activities and when is my official start date for permit coverage after submitting my NOI?

Your deadline for submitting your NOI varies depending on whether the project is a "new project," an "emergency-related project," or if you are a "new operator of a new or existing project." See the following table for a list of applicable deadlines for submitting your NOI and the official start date for permit coverage:

Type of Construction Project	Deadlines for Operators to Submit NOI	Official Start Date for Permit Coverage
New Project	You must submit your NOI at least 14 calendar days prior to commencing earth-disturbing activities.	You are considered covered 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency's website (www.epa.gov/npdes/stormwater/cgpnoisearch), unless EPA notifies you that your authorization has been delayed or denied.
New operator of a new or existing project	You must submit your NOI at least 14 calendar days before the date the transfer to the new operator will take place.	You are considered covered 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency's website (www.epa.gov/npdes/stormwater/cgpnoisearch), unless EPA notifies you that your authorization has been delayed or denied.
Emergency-related project	No later than 30 days after construction commencement.	You are considered covered 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency's website (www.epa.gov/npdes/stormwater/cgpnoisearch), unless EPA notifies you that your authorization has been delayed or denied.

14. Who should the NOI certifier/signer be?

The certifier of the NOI for the EPA CGP (i.e., the person who must sign the NOI form before it is submitted to EPA) must, in accordance with 40 CFR 122.22, be one of the following:

- For a corporation: A responsible corporate officer, which means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing

other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- For a partnership or sole proprietorship: A general partner or the proprietor, respectively.
- For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

Note that the certifier may not use an authorized representative to certify the EPA CGP NOI form.

15. Who is authorized to sign the SWPPP, inspection reports, corrective action reports, and other compliance documents?

SWPPPs, inspection reports, corrective action reports, and other permit documents may be signed by the NOI signer/certifier (see Q&A above), or by a "duly authorized representative" of the person authorized to sign/certify the NOI, pursuant to 40 CFR 122.22(b) and Appendix, Section I.11.2 of the 2012 EPA CGP. A duly authorized representative may only sign these documents if:

- The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
- The signed and dated written authorization is included in the SWPPP. A copy must be submitted to EPA, if requested, pursuant to 40 CFR 122.22(c) and Appendix I, Section I.11.2.3 of the 2012 EPA CGP.

The duly authorized representative cannot be a subcontractor or third party. The subcontractor or third party may develop the SWPPP, and may conduct inspections and corrective actions and complete reports, but the actual signature must be made by the NOI signer/certifier or a duly authorized representative of a person authorized to sign/certify the NOI.

16. The information I submitted on my NOI has changed. Do I need to modify my NOI? If so, how do I modify it?

Modifications to your NOI are required any time there is a change to the information submitted on your NOI form. These changes must be made using the eNOI system, unless the EPA Regional Office has previously given you approval to file a paper NOI. If you were given approval by the EPA Regional Office to submit a paper NOI form, you may use this suggested format to submit modifications to your NOI: http://water.epa.gov/polwaste/npdes/basics/upload/cgp_modify.pdf.

Note that if you will be increasing your disturbed acreage by one or more acres, or if you will be changing the endangered species or historic property eligibility selection on your NOI form, the

changes to your form will be subject to the 14-day review process. During this review process, you may continue to operate in a manner that is consistent with your original NOI (e.g., if you originally indicated a disturbance of five acres, but have expanded your operations to include an additional three acres, you may continue to operate on the original five acres that was listed on your original NOI form), but you must wait until the 14-day review process has ended before operating consistent with your modified NOI, unless EPA notifies you that your authorization to operate in accordance with the changes to your NOI has been delayed or denied.

If you are using the eNOI system to modify any of these sections, a new "Working Copy" of your NOI form will be generated. The Working Copy will be reviewed for 14 days, during which time your original NOI will remain active. The Working Copy will appear in the eNOI application as "[YOUR PERMIT TRACKING NUMBER_Working Copy". After the 14-day review period, provided EPA has not delayed or denied the modifications, the working copy will replace the original NOI and the permit tracking number will revert to the original tracking number.

17. If a general contractor has permit coverage as part of a larger common plan of development or sale, when the project is completed does a Notice of Termination (NOT) need to be filed by the general contractor?

Yes, once all of the construction activities included in the original NOI are eligible for termination of coverage under Part 8 of the EPA CGP, then the operator may submit the NOT in accordance with the permit. However, if portions of the common plan project that are described by the operator in the original NOI are eligible for termination, but other portions are still undergoing active construction or are yet to be started, then the operator must wait until all permitted portions of the project are completed before submitting the NOT.

18. How does EPA's Construction and Development Effluent Limitations Guideline and New Source Performance Standards (C&D rule) relate to the EPA CGP?

EPA finalized the Effluent Limitations Guidelines and New Source Performance Standards for the construction and development industry (i.e., the C&D rule) on December 1, 2009. The C&D rule became effective on February 1, 2010, after which all NPDES construction stormwater permits are required to incorporate the C&D rule requirements. EPA's 2012 CGP includes language that implements the C&D rule requirements. EPA later amended the C&D rule in March 2014, after which all new or re-issued NPDES construction stormwater permits must incorporate the C&D rule requirements, as amended.

19. What does the C&D rule require?

The requirements in the C&D rule include a suite of non-numeric effluent limitations that apply to all permitted construction sites. (See 40 CFR 450.21.) The non-numeric effluent limits include requirements for:

- Erosion and Sediment Controls;
- Soil Stabilization;
- Dewatering;
- Pollution Prevention Measures;
- Prohibited Discharges; and
- Surface Outlets.

20. How does the 2012 EPA CGP differ from the 2008 EPA CGP?

The 2012 EPA CGP includes a number of new provisions implementing the C&D rule, as well as other provisions that provide enhanced protections for impaired or other sensitive waters. In addition, the permit has been modified from the existing 2008 permit to improve its readability and clarity.

Some of the significant permit modifications in the 2012 EPA CGP include new terms and conditions related to:

- Emergency-related construction eligibility;
- Use of cationic treatment chemicals;
- Increased usage of the electronic Notice of Intent process;
- Increased review period from 7 days to 14 days for operators seeking permit coverage;
- Sediment and erosion controls;
- Natural buffers or alternative controls;
- Soil stabilization;
- Pollution prevention;
- Water quality-based effluent limits;
- Site inspections;
- Corrective action;
- Stormwater Pollution Prevention Plans (SWPPPs); and
- Permit termination.

21. What are the new buffer requirements in the 2012 EPA CGP and how do I determine my requirements?

The C&D rule includes a non-numeric effluent limitation to "provide and maintain natural buffers, unless infeasible". However, it does not specify what size buffer is necessary to meet the requirement, but rather leaves this and other related determinations up to the NPDES permitting authority. In drafting the requirements for the 2012 EPA CGP, EPA felt it was reasonable to add specificity to the C&D rule buffer requirement to ensure consistent implementation where EPA is the permitting authority.

To provide maximum flexibility for permittees, EPA developed buffer compliance alternatives in the 2012 CGP. One compliance alternative allows permittees to provide a minimum undisturbed natural buffer width of 50 feet between the site's disturbances and any surface waters occurring within 50 feet of the construction site. Alternatively, the permittee can choose to establish a smaller buffer or no buffer, if establishing a buffer is infeasible, as long as other controls are implemented that ensure that the equivalent level of sediment load reduction is achieved as a 50-foot natural buffer. EPA has also established more flexible compliance alternatives for linear facilities and for small residential lots. To learn more about EPA's buffer requirements and how to comply with them, see the fact sheet for the permit and the buffer appendix.

22. If there is no existing or limited natural vegetation in the 50-foot buffer area between the surface water and my site's disturbances, do I need to comply with the buffer requirements?

If the 50-foot area between your site's disturbances and the surface water (i.e., the buffer area) is completely occupied by preexisting development disturbances (e.g., impervious cover), EPA would consider there to be no preexisting natural buffer area on your site and would consider it infeasible to provide and maintain a natural buffer, and you would be exempt from the buffer

requirements in the EPA CGP. For example, the buffer requirements would not apply if a waterfront promenade completely occupied the 50-foot buffer area.

For any buffer areas that are only partially occupied by preexisting development disturbances, the buffer requirements in the EPA CGP do apply. The buffer requirements also apply to areas in the 50-foot buffer where natural vegetation is limited or nonexistent (e.g., rocky or sandy areas) and that are otherwise not occupied by preexisting development disturbances.

For any natural buffer areas on your site with limited vegetation or where there are preexisting development disturbances partially occupying the area, the permit does not require that the natural buffer area in existence be enhanced (e.g., through establishment of new vegetation). Compliance can be achieved simply by retaining and protecting from construction activities the natural buffer that existed prior to the commencement of construction. Or, if you will be conducting new disturbances within the 50-foot buffer area, to comply with the permit you would only be required to compensate for the loss in buffer sediment removal function resulting from your project's new disturbances; you do not have to compensate for the preexisting development disturbances. EPA provides an example for how this calculation could be done in Attachment 3 of Appendix G (see Example 2).

23. Is there any flexibility in applying the buffer requirements for small residential lots?

Yes. In issuing the 2012 EPA CGP, EPA recognized that operators on small residential lots (i.e., lots being developed for residential purposes that will disturb less than one acre of land, but are part of a larger residential project that will ultimately disturb greater than or equal to one acre) that are constructing within the 50-foot buffer area may, due to limited technical resources, have difficulty determining the necessary supplemental erosion and sediment controls to provide the equivalent sediment removal function of a 50-foot buffer. Because of this, and due to the lower risk of sediment discharge from these sites, EPA provides in the permit two streamlined compliance options to assist operators of small residential lots in meeting the permit's buffer requirements.

The first compliance option identifies the minimum specific controls that an operator of a small residential lot would need to implement based on the buffer width to be retained. For example, Small Residential Lot Compliance Alternative 1 specifies that, if you retain a buffer width of 30 feet or fewer, you would need to provide the following: (1) a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of five (5) feet apart, and (2) completion of stabilization within seven (7) calendar days of the temporary or permanent cessation of earth-disturbing activities.

The second compliance alternative specifies the controls the operator of the small lot would need to implement based on both the buffer width to be retained and the site's relative risk of sediment discharge. Operators on small lots must first determine their site's sediment risk level (i.e., High, Moderate, or Low) based on their location, soil type, and slope using the tables provided in Appendix G. Based on the site's risk level and the width of buffer to be retained, Small Residential Lot Compliance Alternative 2 then specifies the controls to be implemented. For example, if your site is of "Moderate" sediment discharge risk and you are able to retain a 35-foot buffer, you would be required to provide a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of five (5) feet apart.

See Appendix G for details about these compliance alternatives.

24. Is there any flexibility in applying the buffer requirements to linear construction projects?

Yes. EPA recognizes that dispersal of stormwater discharges through adjacent vegetation is a common practice on many linear project sites, and therefore EPA believes that operators of linear projects will in many cases find it feasible to treat stormwater discharges through vegetated buffers. However, EPA recognizes that linear projects may have difficulty in fully complying with each of the compliance alternatives due to site constraints (i.e., linear projects may not be able to provide the full 50-foot naturally vegetated buffer width). For this reason, EPA has provided a more flexible alternative to the buffer compliance alternatives in the 2012 EPA CGP. The permit requires operators of linear construction projects to retain as much natural buffer as feasible, and/or to the extent feasible provide supplemental erosion and sediment controls in the buffer area. For example, if a linear project has only ten feet of right-of-way between the disturbed area and a stream, permit compliance can be achieved by providing a ten-foot natural buffer, or by providing a narrower buffer (e.g., five feet) and additional erosion and sediment controls (e.g., a fiber roll barrier in addition to the perimeter control), or by providing exclusively erosion and sediment controls. Note that operators must document in their SWPPP their rationale as to why it is infeasible to comply with the buffer requirements in Part 2.1.2.1.a, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.

25. For linear utility projects, in areas where perimeter controls are not practicable or, alternatively, not necessary, may the operator document this fact in its SWPPP and proceed without installing such controls in those areas?

Part 2.1.2.2.a of the 2012 EPA CGP requires sediment controls (e.g., filter berms, silt fences, temporary diversion dikes) to be installed along those perimeter areas of the site that will receive stormwater from earth-disturbing activities. The purpose of this requirement is to prevent sediment and any other pollutants from being discharged from construction sites into streams, lakes, or other waterbodies.

To clarify this requirement for the purpose of answering the question, Part 2.1.2.2.a only applies to perimeter areas of the construction site that receive stormwater from the earth-disturbing activity. If a portion of the construction site's perimeter area does not receive stormwater from earth-disturbing activities, perimeter controls would not be required in that portion of the site. Therefore, perimeter controls would not be necessary in the perimeter area surrounding construction activities in areas of sites where no new earth-disturbing activities occur, which could include:

- Pole sites where only overhead work is conducted;
- Use of pre-existing access roads or pad areas where no expansion or below-grade improvements (e.g., no new earth disturbances) will occur; and
- Areas where vegetation is left in place but needs to be trimmed (e.g., mowing, weed-whacking, etc.) to allow temporary access (e.g., overland travel) or use of a site (e.g., wire stringing site). In such circumstances, the ground cover (i.e., grasses and other low-growing vegetation, such as mosses, ferns, vines, shrubs, herbaceous plants, and root mats that are planted or that naturally occur) is retained and no grading occurs.

Additionally, if stormwater does flow from small earth-disturbing activities associated with linear utility projects (e.g., utility pole setting) to perimeter areas of the site, but due to the nature of the site and the existing practices in place, construction-related pollutants are prevented from reaching those perimeter areas (e.g., the minimal scope of the disturbance, the implementation

of controls that keep the ground stabilized and avoid erosion and sedimentation, and the nature of the surrounding area), then the requirement to install sediment controls in the perimeter area as required in Part 2.1.2.2.a will be satisfied. The following example illustrates site-specific conditions and practices that, should they occur in select areas of a small linear utility project, may make it unnecessary to install additional sediment controls along perimeter areas of the site because any discharge of construction-related pollutants will have been prevented:

- Soil disturbances are limited to the setting of the utility pole. Overland travel is used to access the site and, where necessary, vegetation is trimmed, but ground cover is retained and no grading or other earth disturbance occurs;
- The area surrounding the pole is completely vegetated and is left intact during construction, has a low grade, and is not located close (e.g., within 100 feet) to a water of the U.S. or any stormwater conveyance; and/or
- Practices are implemented that prevent construction-related pollutants from reaching perimeter areas. Examples of practices could include, but are not limited to, the following:
    - Construction takes place on a day when no precipitation occurs;
    - Areas surrounding the pole (e.g., 10-foot radius around the pole) that are disturbed are compacted or temporary stabilization is used (e.g., matting, erosion control blankets, geotextile or plastic cover); and
    - The soil removed from the utility pole hole is stockpiled and covered during construction. After the pole is set and soil from the hole is used for backfilling the new pole, excess soil is used in other portions of the project with proper controls or is hauled off-site.

Part 2.1.2.2.a of the 2012 EPA CGP also specifies that "for linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, [the construction operator] must maximize the use of these controls where practicable and document in [the] SWPPP why it is impracticable in other areas of the project." EPA established this provision in order to recognize that for some linear projects, the available space to install perimeter controls can be restricted, thereby making the installation of perimeter controls in those areas not practicable. Therefore, in applicable portions of the site affected by these types of constraints, the EPA CGP requires that the operator maximize the use of these controls where practicable and document why it is impracticable in other areas of the project in the SWPPP. For example, in urban areas where, due to right-of-way limitations, perimeter controls could cause a safety hazard to vehicles and/or pedestrians, perimeter controls may not be practicable.

While perimeter controls may not be practicable in the above circumstances, operators are reminded of the requirement under Part 2.1.1.2.a of the EPA CGP to account for the required design factors for their stormwater controls and their overall obligation in Part 2 to minimize sediment discharges. In addition, the operator must ensure that sediment and other pollutants, which may escape the area of disturbance onto off-site streets, other paved areas, and sidewalks, are removed consistent with the mitigation requirements in Part 2.1.2.3.d.

26. Part 2.1.2.3.b of the 2012 EPA CGP requires operators to "use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit." CGP Part 2.1.2.3.c also requires operators to, "where necessary, use additional controls to remove sediment from vehicle tires prior to exit." Is there any flexibility in the application of these requirements to linear utility

projects, where such stabilization is not appropriate and/or additional controls are not necessary to minimize sediment discharges?

The 2012 EPA CGP requires that all operators restrict vehicle use to properly designated exits, use appropriate stabilization techniques, use additional controls where necessary, and remove sediment that is tracked-out in accordance with Part 2.1.2.3.

EPA acknowledges that the use of exit points for certain narrow linear utility projects can differ from traditional residential or commercial construction projects, where the same exit points are consistently used throughout the life of a project. Linear utility project disturbances, which include natural gas and electric transmission lines, typically consist of multiple disconnected areas of disturbance associated with access roads, stringing pull stations, laydown/staging yards, and pads. Because exit point stabilization is only required for points that exit onto paved roads, it will often be the case that exit point stabilization and the other track-out controls described in Parts 2.1.2.3.b and 2.1.2.3.c of the 2012 EPA CGP will not be required for linear utility projects that use existing unpaved roads to exit their work locations. However, to the extent that any sediment is tracked from existing access points onto paved roads, the requirement to remove tracked-out sediment in Part 2.1.2.3.d still applies.

Linear utility projects are also often constructed in phases with different access points corresponding to different phases or separate work locations within each phase. When access points are created for linear utility projects, they are often constructed as short ingress/egress locations from nearby existing roads, and are often used episodically and only for very short durations over the life of the project. Therefore, the types of exit point stabilization and other controls that are appropriate for these types of access points may differ from construction projects where access points are used more heavily and consistently throughout the life of the project. Examples of exit point stabilization techniques and controls that may be appropriate for access points that are used episodically and only for very short durations by such linear utility projects could include, but are not limited to, the following:

- Using scheduling techniques to prevent the use of exit points during wet periods
- Minimizing exit point use by keeping vehicles onsite to the maximum extent possible;
- Limiting exit point size to the width needed for vehicle usage and using scarifying and compaction techniques on the soil;
- Using woody vegetation chips from the clearance of shrubs and trees on the exit point surface;
- Avoiding locating exit points in environmentally sensitive areas (e.g., wetlands, karst areas, steep slopes); and
- Conducting routine inspections (e.g., daily on scheduled work days) at exit points to assess the need to implement the mitigation measures in Part 2.1.2.3.d.

Exit point stabilization techniques must be selected to ensure that sediment track-out is minimized. To the extent that any sediment is tracked from the existing access point onto paved roads, all operators must ensure that it is removed consistent with the mitigation requirements in Part 2.1.2.3.d (e.g., sweeping, shoveling, vacuuming, or other similar means). For all projects, the exit point stabilization and controls must be selected based on site-specific conditions to meet the overall requirement in Part 2.1.2.3 to minimize sediment track-out, and must take into account safety considerations. The controls that are selected must also be documented in the SWPPP.

27. Why do I have to obtain specific authorization to use cationic treatment chemicals in the 2012 EPA CGP?

A common theme among the comments received on the proposed permit's requirement regarding treatment chemicals was that EPA should take extreme precaution when authorizing the use of cationic chemicals under the 2012 EPA CGP, especially in light of data suggesting that they are acutely toxic to aquatic species and the fact that the use of such chemicals on construction sites is very different from their use in highly engineered systems for water or wastewater treatment. In response to the comments received on the use of these chemicals, EPA conducted additional research regarding the relative toxicity of cationic chemicals for aquatic species. EPA confirmed that cationic chemicals have been found to be acutely toxic to some species. EPA's research is encapsulated in a memorandum entitled "Literature Survey of Polymer Toxicity for Construction General Permit (CGP) Work Group" (Office of Research & Development, November 2011), which is available in the docket for the final permit.

In addition to the public comments and the Agency's aquatic toxicity research, EPA also considered approaches that state permitting programs have taken to address cationic treatment chemicals. EPA found that where cationic chemicals are specifically addressed, the use of these chemicals is heavily conditioned. These considerations have led EPA to the conclusion that the use of cationic treatment chemicals at construction sites is best managed if its proposed use is subject to a greater degree of individualized review. For that reason, EPA has provided for site-specific authorization if a site intends to use cationic treatment chemicals during construction. In authorizing the use of such chemicals, EPA may impose additional requirements in order to ensure that discharges do not cause or contribute to an exceedance of water quality standards.

The 2012 EPA CGP authorizes the use of anionic polymers, flocculants, or other treatment chemicals at sites provided operators using such measures comply with the requirements in Part 2.1.3.3 of the permit. Sites that plan to use cationic treatment chemicals are only eligible for coverage under the 2012 EPA CGP if site-specific EPA authorization is provided; otherwise, an individual permit is required in order to use such chemicals associated with a discharge of pollutants to waters of the United States.

28. What are the new water quality-based requirements in the 2012 EPA CGP?

The 2012 EPA CGP includes requirements that are intended to protect impaired waters that receive construction site stormwater discharges. Sites that discharge to sediment- or nutrient-impaired waters must comply with more rapid site stabilization requirements and increased site inspections. Sites that discharge to high quality waters (i.e., Tier 2, 2.5, or 3 waters) must also comply with the requirements for more rapid site stabilization and increased site inspections.

29. With regard to the requirement to conduct an inspection within 24 hours of the occurrence of a storm event of 0.25 inches or greater, if a project's normal business hours are Monday through Friday and a storm produces greater than 0.25 inches of rain on a Saturday, would an inspection be required on Monday? Or, would an inspection be required on the non-work day?

The 2012 EPA CGP specifies that inspections are only required during a project's normal working hours. In addition, the permit explains that "within 24 hours of the occurrence of a storm event" means that an inspection is required within 24 hours once a storm event has produced 0.25 inches of rain, even if the storm event is still continuing. However, the 2012 EPA CGP is not clear as to when an inspection would be required for permittees conducting inspections after

a 0.25 inch storm event if the rain volume threshold is reached on a non-working day. It was EPA's intention that the inspection be conducted on the next work day if the 0.25 inch threshold is reached on a non-work day. Therefore, for the example above, if the storm event occurs on a Saturday, the inspection would be required on Monday, the next work day.

30. What are my options for meeting the "final stabilization" criteria?

In the 2012 EPA CGP, you can terminate permit coverage as soon final stabilization has been achieved on all areas not covered by permanent structures for which you are an operator, provided you have met the other requirements for terminating coverage. For the purpose of this discussion, "permanent structure" is used not only in the more traditional sense of "buildings," but to refer also to other things built on the ground whose intended purpose would require it to remain in a non-vegetated condition after construction has ended (e.g., parking lots, roads, gravel equipment pads, sidewalks, runways). The permit specifies that final stabilization be achieved through vegetative or non-vegetative measures.

Final vegetative stabilization means that vegetation has been established, or for arid or semi-arid areas, will be established, that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover. Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Vegetative final stabilization requires getting to at least 70 percent of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. If prior to construction the natural cover on your site is 50 percent of the site, you would be required to return the site to 35 percent cover (70 percent of 50 percent). For arid, semi-arid, or drought-stricken areas, where the environmental threat is lower, final stabilization is considered to have been met if the area you have seeded or planted will within three years provide established vegetation that covers 70 percent or more of the density of vegetation prior to commencing earth-disturbing activities. In addition to seeding or planting the area to be vegetatively stabilized in arid and semi-arid areas, to the extent necessary to prevent erosion on the seeded or planted area, you must select, design, and install non-vegetative erosion controls that provide cover for at least three years without active maintenance by you. Non-vegetative erosion controls in this context include what are known as "temporary degradable rolled erosion control products," a.k.a., "erosion control blankets" (ECBs).

Final non-vegetative stabilization means that non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site. Examples include, but are not limited to, rip-rap, gravel, gabions, and geotextiles.

31. Do state-issued permits have to be the same as the EPA-issued permits for stormwater discharges from construction activities?

No. Nothing in the Clean Water Act precludes a state from adopting or enforcing requirements that may be more appropriate to address discharges in their state, or that are more stringent or more extensive than those required under the NPDES regulations while still meeting their obligations under the Clean Water Act. EPA does note, however, than any state-issued CGP must incorporate or be as stringent as the C&D rule discussed above. Whether EPA, a state, or a tribe issues the permit, the CWA and EPA regulations require that NPDES permits include technology-based effluent limitations (CWA section 301(b)(1)(A); 40 CFR section 122.44(a)). In addition, where the discharge with technology-based effluent limitations would have reasonable potential to cause or contribute to an exceedance of applicable water quality standards, the permit must contain water quality-based effluent limitations as necessary to meet those

standards (CWA section 301(b)(1)(C); 40 CFR section 122.44(d)). States are free to incorporate additional requirements that they believe are reasonably necessary and/or helpful to adequately protect water quality in their respective jurisdictions.

Although states may issue permit requirements that differ from EPA, the Agency recognizes that, with respect to stormwater general permits, many state-issued general permits follow EPA's general permit and content.